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Attorneys for Plaintiff
 VNUS Medical Technologies, Inc.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

VNUS MEDICAL TECHNOLOGIES, INC.,)	LEAD CASE NO. C08-03129 MMC
)	
Plaintiff,)	CASE NO. C08-03129 MMC
)	
v.)	PLAINTIFF'S ANSWER TO AMENDED
)	COUNTERCLAIMS OF DORNIER
BIOLITEC, INC., DORNIER MEDTECH)	MEDTECH AMERICA, INC.
AMERICA, INC., and NEW STAR LASERS,)	ASSERTED IN RESPONSE TO SECOND
INC. d/b/a COOLTOUCH, INC.,)	AMENDED COMPLAINT
)	
Defendants.)	
)	

VNUS MEDICAL TECHNOLOGIES, INC.,)	CASE NO. C08-04234 MMC
)	
Plaintiff,)	
)	
v.)	
)	
TOTAL VEIN SOLUTIONS, LLC d/b/a)	
TOTAL VEIN SYSTEMS,)	
)	
Defendant.)	
)	

1 Plaintiff VNUS Medical Technologies, Inc. ("VNUS") answers the Amended
2 Counterclaims (the "Counterclaims") of defendant Dornier MedTech America, Inc. ("Dornier")
3 asserted in response to the Second Amended Complaint (the "Complaint") as follows:

4 **COUNTERCLAIMS**

5 1. Paragraphs 1-18 of VNUS's Second Amended Complaint for Patent Infringement
6 are repeated and re-alleged as if set forth herein. Denied that the affirmative defenses asserted in
7 Paragraphs 20-24 of Dornier's Amended Answer to the Complaint overcome VNUS's infringement
8 claims.

9 **THE PARTIES**

10 2. Admitted that Dornier is a Georgia corporation with a place of business at 1155
11 Roberts Boulevard, Kennesaw, Georgia 30144.

12 3. Admitted.

13 **JURISDICTION AND VENUE**

14 4. Admitted.

15 5. Admitted.

16 6. Admitted that Dornier seeks a declaratory judgment of invalidity, non-infringement,
17 and unenforceability of the patents-in-suit, but denied that Dornier is entitled to the requested relief.

18 7. Admitted.

19 8. Admitted.

20 9. Admitted.

21 **FIRST COUNTERCLAIM FOR RELIEF**

22 **(For a Declaration that Dornier has not infringed, either directly
or indirectly, the claims of the patents-in-suit)**

23 10. VNUS's responses to Paragraphs 1-9 above are incorporated here by reference.

24 11. Denied.

25 12. Denied.

26 **SECOND COUNTERCLAIM FOR RELIEF**

27 **(For a Declaration that the patents-in-suit are invalid)**

28 13. VNUS's responses to Paragraphs 1-12 above are incorporated here by reference.

14. Denied.

15. Denied.

THIRD COUNTERCLAIM FOR RELIEF

(For a Declaration that U.S. Patent No. 6,752,803 is unenforceable)

16. VNUS's responses to Paragraphs 1-15 above are incorporated here by reference.

17. Averred that the file history of U.S. Patent No. 6,752,803 (the "'803 Patent") speaks for itself.

18. Averred that the file history of the '803 Patent speaks for itself. Except as so averred, the allegations of this Paragraph are denied.

19. Denied.

20. Denied.

21. Averred that the "Baker patent" (U.S. Patent No. 6,228,082) speaks for itself. Except as so averred, the allegations of this Paragraph are denied.

22. Averred that the '803 Patent speaks for itself. Except as so averred, the allegations of this Paragraph are denied.

23. Averred that the file history of the '803 Patent speaks for itself. Except as so averred, the allegations of this Paragraph are denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

FOURTH COUNTERCLAIM FOR RELIEF

(For a Declaration that U.S. Patent Nos. 6,752,803 and 6,258,084 are unenforceable)

28. VNUS's responses to Paragraphs 1-27 above are incorporated here by reference.

29. Averred that the '803 Patent and U.S. Patent No. 6,258,084 (the "'084 Patent") speak for themselves.

30. Averred that the relevant prior art speaks for itself. Except as so averred, the allegations of this Paragraph are denied.

31. Averred that each of the documents cited in this Paragraph speaks for itself. Admitted that a named inventor on the applications for the '803 and '084 Patents, Dr. Mitchel P. Goldman, was a co-author of an article published in 1998 entitled *Tumescent Anesthesia in Ambulatory Phlebectomy*, (Smith and Goldman, Dermatol Surg. 1998; 24:453-456) and authored sections of a book published in 1995 entitled *Ambulatory Phlebectomy*. Except as so admitted or averred, the allegations of this Paragraph are denied.

32. Denied.

33. Denied.

34. Averred that each of the documents cited in this Paragraph speaks for itself. Admitted that a named inventor on the applications for the '803 and '084 Patents, Dr. Mitchel P. Goldman, was a co-author of an article published in 1998 entitled *Tumescent Anesthesia in Ambulatory Phlebectomy*, (Smith and Goldman, Dermatol Surg. 1998; 24:453-456) and authored sections of a book published in 1995 entitled *Ambulatory Phlebectomy*. Except as so admitted or averred, the allegations of this Paragraph are denied.

35. Averred that the file histories for the '803 and '084 Patents speak for themselves. Except as so averred, the allegations of this Paragraph are denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

FIFTH COUNTERCLAIM FOR RELIEF

(For a Declaration that U.S. Patent No. 6,258,084 is unenforceable)

42. VNUS's responses to Paragraphs 1-41 above are incorporated here by reference.

43. Averred that the '084 Patent speaks for itself.

44. Admitted that on September 12, 1997, a patent application that VNUS filed pursuant to the Patent Cooperation Treaty ("PCT") was published as International Publication No. WO

1 97/32532 (the “VNUS ’532”). Averred that the VNUS ’532 speaks for itself. Except as so
2 admitted or averred, the allegations of this Paragraph are denied.

3 45. Averred that the inventors of the VNUS ’532, including Arthur Zikorus, who is also
4 one of the inventors of the ’084 Patent, knew of the method set forth in the VNUS ’532 since as
5 early as its filing date of March 4, 1997. Except as so averred, the allegations of this Paragraph are
6 denied.

7 46. Denied.

8 47. Denied.

9 48. Denied.

10 49. Denied.

11 50. Denied.

12 **SIXTH COUNTERCLAIM FOR RELIEF**

13 **(For a Declaration that U.S. Patent No. 7,396,355 is unenforceable)**

14 51. VNUS’s responses to Paragraphs 1-50 above are incorporated here by reference.

15 52. Denied.

16 53. Admitted that U.S. Patent No. 7,396,355 is a continuation of the ’803 Patent.

17 Except as so admitted, the allegations of this Paragraph are denied.

18 54. Denied.

19 **SEVENTH COUNTERCLAIM FOR RELIEF**

20 **(For a Declaration that U.S. Patent Nos. 6,769,433 and 7,406,970 are unenforceable)**

21 55. VNUS’s responses to Paragraphs 1-54 above are incorporated here by reference.

22 56. Admitted that U.S. Patent Nos. 6,769,433 and 7,406,970 are related to the ’803 and
23 ’804 Patents. Averred that the foregoing patents speak for themselves. Except as so admitted or
24 averred, the allegations of this Paragraph are denied.

25 57. Denied.

26 **PRAAYER FOR RELIEF**

27 VNUS denies that Dornier is entitled to any relief in connection with the allegations
28 contained in the Counterclaims, including the relief specified immediately following paragraph 57

1 of the Counterclaims.

2 WHEREFORE, VNUS requests that judgment be entered against Dornier in connection
3 with the Counterclaims, that judgment be entered in favor of VNUS, that VNUS be awarded its
4 costs, expenses and attorneys' fees to the extent permitted by law, and that the Court grant such
5 other relief it deems appropriate.

6
7 Dated: November 21, 2008

Respectfully Submitted,

8 ATTORNEYS FOR PLAINTIFF
9 VNUS MEDICAL TECHNOLOGIES, INC.

10 By: /s/ Suong T. Nguyen

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